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June 15, 2010

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVE INTERGOVERNMENTAL CONTRACT WITH THE
CALIFORNIA ENERGY COMMISSION TO ENHANCE AND EXPAND
THE LOS ANGELES COUNTY ENERGY PROGRAM
(3 VOTES) (ALL DISTRICTS)**

SUBJECT

Request approval to enter into an intergovernmental contract with the California Energy Commission (CEC) to enhance the implementation of the Los Angeles County Energy Program (LACEP) throughout the County and in cities within the County that will participate in LACEP.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Authorize the Director of Internal Services Department (ISD) or his designee to execute an intergovernmental contract with the CEC for \$8 million in Energy Efficiency and Conservation Block Grant (EECBG) funds to implement residential energy efficiency retrofit projects throughout the County effective July 1, 2010 through June 2012.
2. Delegate authority to the Director of ISD or his designee to approve any required time extensions, modifications, or amendments to the contract, and execute all required documents with the CEC.
3. Find that approval of these actions is categorically exempt pursuant to the provisions of the California Environmental Quality Act (CEQA).

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

In October 2009, your Board accepted the County's allocation of \$15.4 million in formula-allocated Energy Efficiency and Conservation Block Grant (EECBG) funding received under the American Recovery and Reinvestment Act (ARRA). The County has identified approximately \$12.2 million of this EECBG funding to support the development, design, administration and implementation of the LACEP program for County unincorporated areas. Incorporated cities within the County will have the opportunity to join LACEP through the adoption of a resolution by their respective city councils.

On May 25, 2010, your Board held a public hearing and approved adoption of the LACEP to provide financing to qualified property owners within the County for the installation of distributed generation renewable energy projects and energy and water efficiency improvements to their respective properties. Also on May 25, 2010, your Board accepted \$30 million in competitive EECBG grant funding from the United States Department of Energy (DOE). As the lead agency in California, Los Angeles County will manage the overall \$30 million DOE grant, which includes approximately \$14 million to support the LACEP, with the remainder of the grant designated for other State-wide sub-awardees.

Your Board's approval of the intergovernmental contract with the CEC will provide additional resources to support widespread implementation of the LACEP throughout the County. With this funding, the CEC seeks to expand the participation of property owners in LACEP by allowing ISD to promote energy efficiency retrofits, conduct training for contractors, and provide broad marketing and outreach within incorporated cities that participate in LACEP. This funding will supplement the formula-allocated EECBG funds, which were limited for use within only County unincorporated areas.

Activities under this contract will be consistent with the LACEP activities described by the County in the December 2009 State Energy Program grant application. This includes specific initiatives such as:

- Support the development of a large-scale Property Assessed Clean Energy (PACE) program to increase the number of buildings that implement energy efficiency measures;
- Increase the delivery capacity of building professionals for energy efficiency projects through self-sustaining workforce development programs;
- Drive consumer demand for home energy retrofits through marketing and outreach strategies that leverage existing community and private-sector distribution channels and collaborate with national, State, and utility retrofit programs.

By the end of 2012, LACEP seeks to achieve energy retrofits for 15,000 single-family homes in unincorporated areas of the County, with the potential to add \$150 million to the local economy. LACEP also intends to create an estimated 1,600 home energy retrofit jobs and as many as 1,000 ancillary jobs in fields such as workforce development, local manufacturing, product distribution, and research and development. These improvements to the local economy are in addition to the environmental objectives associated with LACEP and the goal of reducing the County's annual greenhouse gas emissions (attributable to its existing housing stock) by 20,000 tons of carbon dioxide annually.

As cities within the County pass resolutions to join LACEP, the number of retrofits implemented, jobs created, dollars added to the economy, and other environmental benefits should increase dramatically. LACEP has the potential to become the biggest program of its kind in the United States.

Implementation of Strategic Plan Goals

These actions support Goal 1, Operational Effectiveness, by obtaining external funding to promote environmentally responsible practices. These actions also support Goal 3, Community and Municipal Services, by providing a program that promotes energy efficiency and conservation, and enhances health and sustainable practices in the County.

FISCAL IMPACT/FINANCING

Due to the recent receipt of this award, ISD's Fiscal Year 2010-11 Final Changes budget request does not reflect appropriations to implement these CEC-funded activities. ISD will request the necessary appropriation authority from your Board in the Fiscal Year 2010-11 Supplemental Budget Request. Requests for future fiscal year activities will be submitted with the annual budget request.

Under the terms of the contract, ISD will be compensated for allowable administrative costs of up to \$400,000 to manage the contract and implement programs. There will be no impact to the County General Fund.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

In December 2009, ISD submitted a grant application package to the CEC for the competitive State Energy Program grant program (RFP # 400-09-403). The application requested \$12 million to implement a comprehensive energy efficiency retrofit program (the LACEP) Countywide. Under the CEC's evaluation process for this competitive grant, the County was notified that this application would not be funded. Subsequently, in March of 2010, ISD and the CEO Intergovernmental Relations Office staff in Sacramento met with CEC President Karen Douglas, Commissioner Anthony Eggert, and CEC staff to discuss the County's program, application and the CEC evaluation process.

On April 22, 2010, ISD was notified by the CEC of their intention to award an intergovernmental contract through the Department of General Services in the amount of \$8 million to the County to expand the LACEP within those cities that adopt a resolution to participate in the program. The intergovernmental contract is not part of the State Energy Program (SEP) grants, but would be awarded under a sole source statutory exemption using non-SEP EECBG funds. Under the contract, ISD will leverage and augment existing funding awarded under the formulated-allocated EECBG program (that can only be spent in County unincorporated areas) by promoting and implementing LACEP within all incorporated cities that have opted into the program. Per the CEC requirements, all projects must be completed by June 2012.

The terms and conditions of this award are substantially similar to the terms and conditions of Attachment I, and have been approved as to form by County Counsel (Attachment I).

ENVIRONMENTAL DOCUMENTATION

The project meets the criteria set forth in Section 15308 of the State CEQA Guidelines and Class 8 of the County's Environmental Document Reporting Procedures and Guidelines, Appendix G, in that

it is an action taken by a regulatory agency, as authorized by state law, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment.

The project is within a class of projects that has been determined not to have a significant effect on the environment. In addition, there are no cumulative impacts, unusual circumstances, or other limiting factors that would make the exemption inapplicable based on the project records. Upon approval by your Board, ISD will file a Notice of Exemption with the County Clerk in accordance with Section 15062 of the State CEQA Guidelines.

CONTRACTING PROCESS

This sole source intergovernmental contract will be negotiated by ISD and CEC to define the scope of work and deliverables for the LACEP.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of these actions will facilitate widespread implementation of the LACEP to reduce greenhouse gases, reduce total energy use and improve energy efficiency throughout the County in a cohesive and comprehensive manner. Expanding the LACEP will help the State achieve the goal of implementing programs that provide substantial, sustainable, and measurable energy savings, job creation and economic stimulus benefits.

CONCLUSION

The Executive Office of the Board of Supervisors is requested to return one stamped copy of the approved Board letter to the Director of ISD.

Respectfully submitted,

A handwritten signature in dark ink that reads "Tom Tindall". The signature is written in a cursive, slightly slanted style.

TOM TINDALL
Director

TT:HC:MB

Enclosures

c: Chief Executive Officer
Executive Office, Board of Supervisors
County Counsel

EXHIBIT C

GENERAL TERMS AND CONDITIONS

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ATTACHMENT I

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EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. ***Grant Agreement***

This project is being funded with a grant from the California Energy Commission (Commission). The Commission obtained the funds to make this grant through a federal grant agreement [Recovery Act: State of California Energy Efficiency and Conservation Block Grant (EECBG), number DE-EE0000905] with the U.S. Department of Energy (DOE). It is hereby understood and agreed that this Agreement shall be governed by the laws of the State of California (State) as to interpretation and performance.

This Agreement is comprised of the grant funding award, the Terms and Conditions, and all attachments. These Terms and Conditions are standard requirements for grant awards. The Commission may impose additional special conditions in this grant Agreement that address the unique circumstances of this project. Special conditions that conflict with these standard provisions take precedence.

All work and/or the expenditure of funds (Commission-reimbursed and/or match share) must occur within the approved term of this Agreement. The Commission cannot authorize any payments until all parties sign this Agreement.

2. ***Attachments and References***

The following certifications and supporting documents are attached to this Agreement.

Exhibit A – Scope of Work

Exhibit B – Budget

- Attachment B-1 – Financial Status Request or Payment Request

Exhibit C - Terms and Conditions

- Attachment C-1 – Assurance of Compliance, Nondiscrimination in Federally Assisted Programs
- Attachment C-2 – Certifications Regarding Lobbying and Debarment, Suspension and Other Responsibility Matters
- Attachment C-3 – Disclosure of Lobbying Activities

- Attachment C-4 – National Policy Assurances
- Attachment C-5 – Federal Intellectual Property Provisions
- Attachment C-6 – Project Type Metrics
- Attachment C-7 – Vendor Flow-Down Provisions (Federal)
- Attachment C-8 – Direct Equipment Purchase Supporting Documentation (if applicable and as finalized by the Energy Commission and Recipient)

Exhibit D

- Special Terms and Conditions (if applicable)

Exhibit E

- Contacts

Exhibit F

- Definitions

3. *Federal Provisions Incorporated by Reference*

The Office of Management and Budget (OMB) Circulars and federal laws, regulations, and guidelines checked below are incorporated by reference as part of this Agreement. They are used to help guide the administration of this Agreement when questions arise during the course of performance of the award. OMB Circulars may be accessed on the OMB web site at www.whitehouse.gov/omb/circulars/index.html or by calling the Office of Administration, Publications Office, at (202) 395-7332. Federal regulations may be accessed at <http://ecfr.gpoaccess.gov>.

The Recipient must include in its subawards the provisions below that apply to the particular organization concerned.

- ☒ 42 United States Code (USC) Sections 17151 – 17158
- ☒ Title 10 Code of Federal Regulations (CFR) Part 600: Department of Energy (DOE) Financial Assistance Regulations
- ☒ Energy Efficiency and Conservation Block Grant Funding Opportunity Announcement DE-FOA-0000013, CDFA Number 81.128 (<https://www.fedconnect.net/FedConnect/>)

- ☒ OMB Circular A-102: Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- ☒ OMB Circular A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (also applicable to private entities)
- ☒ OMB Circular A-87: Cost Principles for State, Local and Tribal Governments
- ☒ OMB Circular A-21: Cost Principles for Educational Institutions
- ☒ OMB Circular A-122: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Non-Profit Organizations (non-profit organizations and individuals, except for those specifically exempted)
- ☒ OMB Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations
- ☐ Other: _____
- ☐ None

4. *Funding Limitations*

Any federal, State, and local laws and regulations applicable to your project not expressly listed in this Agreement are incorporated herein as part of this Agreement.

The funding source(s) and applicable restriction(s) identified below apply to this grant:

- Funding for this Agreement is dependent upon a federal grant agreement, which is scheduled to terminate on September 13, 2012. Funding for this Agreement is subject to the approval of the applicable Federal Government agency, federal law, federal court judgments, and/or federal agency orders that may affect the provisions or terms of this Agreement.
- Energy Efficiency and Conservation Block Grant (EECBG) funding for this Agreement is approved as part of the EECBG grant. Grant funds may be used only for eligible activities as provided in 42 U.S.C. Section 17154(3)-(13) and as approved in the Block Grant Guidelines.

- Supplanting
Grant funds may not be used to supplant (i.e., take the place of) previously budgeted funds for this project, whether Recipient funds or funding from other grants. This includes budgeting for staff, contractors, or supplies. Funds may be used to supplement an existing budget.

5. *Due Diligence*

The Recipient is required to take timely actions which, taken collectively, move this project to completion. The Commission Project Manager will periodically evaluate the schedule for completion of Work Statement tasks. If the Commission Project Manager determines (1) the Recipient is not being diligent in completing the tasks in the Work Statement or (2) the time remaining in this Agreement is insufficient to complete all project work tasks by the approved Agreement end term date, the Project Manager may recommend to the Policy Committee of the Commission (Committee) that this Agreement be terminated, and the Committee may, without prejudice to any of its remedies, terminate this Agreement.

6. *Products*

Products are defined as any tangible item specified in the Work Statement. Unless otherwise directed, draft copies of all products identified in the Work Statement shall be submitted to the Commission Project Manager for review and comment. The Recipient will submit an original and two copies of the final version of all products to the Commission Project Manager.

7. *Reports*

a. Progress Reports

Progress reports are due monthly by the third of the following month until project completion. See Section 26(l) for progress report due dates and content.

b. Final Reports

A draft final report shall be submitted to the Commission Project Manager no later than 60 days prior to the end of the Agreement term. At a minimum, the report shall include:

- Table of Contents.
- Abstract.
- A brief summary of the objectives of the project and how these objectives were accomplished.

- Any findings, conclusions, or recommendations for follow-up or ongoing activities that might result from the successful completion of the project.
- A statement of future intent of the grant Recipient to maintain or further develop the project.
- A Payment Request form for the final payment (including any retention).
- A consolidated list of subcontractors funded in whole or in part by the grant Recipient. Include the name, address, concise statement of work done, period, and value of each.
- Additional information specified in the Work Statement or Special Conditions.

The Commission Project Manager will review the draft final report. The Recipient will incorporate applicable comments and submit the final report (the original and two copies) to the Commission Project Manager.

Upon receipt of the final report, the Commission Project Manager shall ensure that all work has been satisfactorily completed.

c. **Rights in Reports**

The Commission reserves the right to use and reproduce all reports and data produced and delivered pursuant to this Agreement, and reserves the right to authorize others to use or reproduce such materials. Each report becomes the property of the Commission.

d. **Failure to Comply with Reporting Requirements**

Failure to comply with the reporting requirements contained in this Agreement will be considered a material noncompliance with the terms of this Agreement. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards.

8. Publications - Legal Statement on Reports and Products

- a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

- b. An acknowledgment of California Energy Commission and federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: “This material is based upon work supported by the California Energy Commission and the Department of Energy under Award Number DE-0000905.”

Disclaimer: “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the California Energy Commission, the United States Government, nor any agency thereof, nor any employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the California Energy Commission, the United States Government, or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the California Energy Commission, the United States Government, or any agency thereof.”

9. Changes to the Agreement

a. Amendments

1. This Agreement may be amended to make changes, including without limitation: additional funds, additional time, additional or modified tasks, and additional or modified terms.
2. The Contractor acknowledges that provisions included in this Agreement pursuant to Federal or State law, regulation, or policy are subject to change. The Contractor agrees to comply with any amendments that the Energy Commission makes to this Agreement to comply with Federal or State law, regulation, or policy.

3. Formal Amendments

Significant changes to this Agreement must be approved at a Commission business meeting through a formal amendment. Significant changes include, but are not limited to:

- Change of Recipients legal name,
- Change of Recipient,

- Changes to Work Statement that reasonably modify the purpose of the Agreement, or
- Reallocations of more than 10% of the total budget amount between the line items of the Category Budget (Exhibit B) pursuant to subsection (b) below.

The following changes are not permitted for this Agreement:

- Changes to the Work Statement that extend the due dates beyond the term of the Agreement,
- Changes to the Budget that increase the amount of the Agreement, or
- Reallocations to the Budget that reduce the cost-effectiveness of the project below the minimum cost-effectiveness standard specified in the Block Grant Guidelines,

The Recipient shall submit a request in writing to the Project Manager with a copy to the Commission Grants and Loans Officer for any permissible, significant change. The Project Manager will notify the Recipient Project Manager of the appropriate Commission action within ten (10) working days.

4. Informal Amendments

The Commission's Project Manager may approve changes to this Agreement that are not significant, including changes required to comply with Federal or State law, regulation, or policy. These changes shall be documented in a letter of agreement between the Recipient and the Commission Grants and Loans Officer.

b. Budget Reallocations

- (1) The Commission, through its Project Manager and Grants and Loans Officer, and the Recipient can agree upon and make certain budget reallocations without a formal amendment to this Agreement as long as ALL of the following conditions are met:

- (a) The total of all budget reallocations cannot exceed ten percent (10%) with a cap amount of \$75,000 of the Agreement Amount. For purposes of this "Budget Reallocation Rule" "Agreement Amount" means the total amount of Commission funds being paid to the Recipient under this Agreement. It does not include any match funds provided by the Recipient.

For example, if under an agreement the Commission agrees to pay a recipient \$100,000 and the recipient is supplying

\$500,000 in match funding, the ten percent (10%) limitation applies to the \$100,000. Only up to \$10,000 of Commission funds could be reallocated without a formal amendment. If under an agreement the Commission agrees to pay a recipient \$800,000, ten percent would be \$80,000, but the cap is \$75,000, so the most that could be reallocated without a formal amendment is \$75,000; AND

(b) The budget reallocation cannot substantially change the scope of work. Examples of budget reallocations that do not substantially change the scope of work include, but are not limited to, the following:

- Increasing or decreasing the overall travel budget. This does not mean an increase to the allowed per diem rates under this Agreement.
- Increasing or decreasing the equipment budget, including increasing or decreasing the quantity of equipment already proposed in the project as long as the project has been previously approved in the agreement. This does not include adding equipment for additional projects not previously approved in the budget. Adding additional projects is a change in scope and requires a formal amendment. For example, a project to retrofit fifty T-12 lights with fifty T-8 lights may be increased to a project that retrofits sixty T-12 lights with sixty T-8 lights if the project comes under budget. This does not require a formal amendment. But using the left over money for lighting control project that was not previously approved in the Agreement is a formal amendment and needs to be approved at a Commission business meeting.
- Increasing or decreasing the number of personnel assigned to complete tasks; AND,

(c) The budget reallocation only involves moving funds between budget categories. The total Agreement Amount must remain unchanged. Increasing the total amount of the Agreement is not permitted; AND,

(d) The budget reallocation does not cause the project to fall below the minimum cost-effectiveness standard as described in the Block Grant Guidelines.

(2) To effectuate a budget reallocation under this section, the Recipient must make a request in writing to both the Commission Project Manager and the Grants and Loans Officer. Both the Commission Project Manager and the Grants and Loans Officer will then approve

or disapprove the request in writing; the approval or disapproval is not effective or binding unless signed by both the Commission Project Manager and the Grants and Loans Officer. Oral communications cannot be used or relied upon. If the request is approved, the Commission Project Manager shall revise the Budget Attachments to reflect the changes and send them to the Grants and Loans Officer and the Recipient.

- (3) Any desired budget reallocations that do not meet both criteria in this section must be made through a formal amendment. For purposes of this provision, a "formal amendment" means that all of the following must occur: approval by the Commission at a Commission business meeting and a written amendment signed by both parties.

Attempted budget reallocations that do not meet the requirements of this section are not legally binding upon the parties.

c. Federal Approval

Amendments may also require prior written approval from DOE.

10. Contracting and Procurement Procedures

a. General Requirements for all Subcontracts

The Recipient is required, where feasible, to employ contracting and procurement practices that promote open competition for all goods and services needed to complete this project. Recipient shall obtain price quotes from an adequate number of sources for all subcontracts.

Procurement and subcontracting criteria are specified in the applicable OMB Circulars and/or additional federal provisions incorporated by reference in this Agreement. The Commission will defer to the Recipient's own regulations and procedures as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in this Agreement and any OMB Circulars and/or federal regulations incorporated by reference in this Agreement, including 10 CFR Section 600.

More specifically, recipients that are state or local governments shall follow the procurement provisions of 10 CFR Section 600.236(b) through (i). Subawardees that are institutions of higher education, hospitals, and other nonprofit organizations shall follow 10 CFR Sections 600.140 through 600.148. Subawardees that are for-profit organizations shall follow 10 CFR Section 600.331.

The Recipient must ensure that any subcontractors under this Agreement are paid in compliance with federal and state prevailing wage laws in accordance with

Sections 26(o) and 28 below. When advertising for a public contract opportunity, Recipients must attach the applicable wage determinations to the solicitation, assistance agreement, and resulting contract or grant. Under the federal Davis-Bacon Act, a Recipient contracting out work on a covered project must provide the wage determination to the contractors or subcontractors 10 calendar days prior to issuing the solicitation.

The Recipient is liable and responsible for handling all contractual and administrative issues arising out of or related to any subcontracts it enters into under this Agreement.

All subcontracts must incorporate all of the following:

- A clear and accurate description of the material, products, or services to be procured as well as a detailed budget and timeline. The budget must include an itemized list of expenses, including, where applicable, detailed descriptions of all administrative costs, overhead, travel, materials and supplies, equipment, and contract labor.
- Provisions that ensure compliance with federal and state prevailing wage laws.
- Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- Provisions for termination by the Recipient, including termination procedures and the basis for settlement.
- Language conforming to the "Nondiscrimination" provision in this Agreement.
- Any additional requirements specified in the federal provisions incorporated by reference on pages 2-3 of this Agreement.
- The provisions required by 10 Code of Federal Regulations (CFR) Section 600.236(i).
- The "Standard of Performance" provisions specified in this Agreement.
- The "Retention of Records" provisions specified in this Agreement.
- Audit provisions specified in this Agreement.
- Language conforming to the "Indemnification" provision in this Agreement.

- Language conforming to the “License” provision in this Agreement.
- National Policy Assurances, where applicable.
- Language conforming to the “Lobbying Activities” provision in this Agreement.
- All provisions in Section 25 of this Agreement, “Additional Requirements for Federally-Funded Grants.” However, vendor subcontracts¹ need only contain the provisions of Section 25 listed in Exhibit C Attachment C-7, “Vendor Flow-Down Provisions (Federal).”
- All provisions in Section 26 of this Agreement, “Special Provisions Relating to Work Funded under the American Recovery and Reinvestment Act of 2009.” However, vendor subcontracts need only contain the provisions of Section 26 listed in Exhibit C Attachment C-7, “Vendor Flow-Down Provisions (Federal).”

b. Specific Requirement to Submit Subcontract Documentation

Within 30 days or less after execution of any subcontract for services or products under this Agreement, and prior to when any work may commence under such a subcontract, the Recipient must submit to the Commission Project Manager a copy of the following support documentation:

- The complete, finally executed subcontract, and
- The applicable wage determinations for any and all labor and mechanic work, to be performed under the subcontract

c. Requirement to Maintain Subcontract Documentation

In addition to submitting the specific documentation identified in subsection (b) above, the Recipient must maintain the following documentation and provide them promptly upon request by the Commission Project Manager:

- all solicitations for services or products required to carry out the terms of this Agreement,
- copies of the proposals or bids received
- if applicable, justification and cost analysis for noncompetitive proposals in accordance with 10 CFR 600.236(d)(4) specifying why competitive procurement was infeasible and which of the following circumstances applies:
 - The item is available only from a single source;

¹ Vendors are entities defined as such by Office of Management and Budget (OMB) Circular A-133 (see Subpart A, Section .105 and Subpart B, Section .210).

- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- USDOE authorizes noncompetitive proposals; or
- After solicitation of a number of sources, competition is determined inadequate.
- copies of subcontracts executed.

d. Additional Requirements

If a specific subcontractor was identified in the original grant application and the grant was approved based in part on this subcontractor's qualifications, then prior written approval from the Commission Project Manager is required before substituting a new subcontractor.

Failure to comply with the requirements of this Section 10 may result in the termination of this Agreement.

11. *Bonding and Insurance*

The Recipient will follow its own bonding and insurance requirements relating to bid guarantees, performance bonds, and payment bonds without regard to the dollar value of the subcontract(s) as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in the OMB Circulars and/or federal regulations incorporated by reference in this Agreement.

12. *Permits and Clearances*

The Recipient is responsible for ensuring all necessary permits and the environmental documents are prepared and clearances are obtained from the appropriate agencies.

13. *Equipment*

Title to equipment acquired by the Recipient with grant funds shall vest in the Recipient. The Recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by grant funds, and the Recipient shall not encumber the property without Commission Project Manager approval. When no longer needed for the original project or program, the Recipient shall contact the Commission Project Manager for disposition instructions.

All equipment purchased with Federal funds shall be subject to the provisions of Title 10 Code of Federal Regulations (CFR) Part 600: DOE Financial Assistance regulations (<http://ecfr.gpoaccess.gov>), which are incorporated by reference in Section 3 of this Agreement.

14. Termination

This project may be terminated for any reason set forth below.

a. With Cause

In the event of any breach by the Recipient of the conditions set forth in this Agreement, the Commission Policy Committee may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Recipient.

b. Without Cause

The Commission Policy Committee may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Recipient by certified mail, return receipt requested. In such event, the Recipient agrees to use all reasonable efforts to mitigate the Recipient's expenses and obligations hereunder. Also in such event, the Commission shall pay the Recipient for all satisfactory work performed and expenses incurred within 30 days after such notice of termination which could not by reasonable efforts of the Recipient have been avoided, but not in excess of the maximum payable under this Agreement.

15. Travel and Per Diem

- a. The Recipient shall be reimbursed for travel and per diem expenses using the same rates provided to non-represented State employees. The Recipient must pay for travel in excess of these rates. The Recipient may obtain current rates from the Energy Commissions Web Site at: http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF.
- b. Travel identified in the Budget section of this Agreement is approved and does not require further authorization.
- c. Travel that is not included in the Budget section of this Agreement shall require written authorization from the Project Manager and Grants and Loans Officer prior to travel departure. The Energy Commission will reimburse travel expenses from the Recipient's office location.
- d. The Recipient must retain documentation of travel expenses in its financial records. The documentation must be listed by trip and include dates and times of departure and return. Travel receipts, except for travel meals and incidentals, shall be submitted with invoices requesting reimbursement from the Energy Commission.

16. License

- a. The Commission shall be granted a no-cost, nonexclusive, nontransferable, irrevocable worldwide license to use or have practiced for or on behalf of the State inventions developed hereunder and patents or patent applications derived from such inventions. Recipient must obtain agreements to effectuate this clause with all persons or entities obtaining ownership interest in the patented subject inventions.
- b. The Commission makes no claim to intellectual property that existed prior to this Agreement and was developed without Commission funding. If applicable, the Recipient gives notice that the items listed in the Intellectual Property attachment or exhibit have been developed without Commission funding and prior to the start of this Agreement. This list represents a brief description of the prior developed intellectual property. A detailed description of the intellectual property, as it exists on the effective date of this Agreement, may be necessary if Commission funds are used to further develop the listed intellectual property. This information will assist the parties to make an informed decision regarding intellectual property rights.
- c. The Commission shall be granted the no-cost use of the technical data first produced or specifically used in the performance of this Agreement.
- d. The Commission shall be granted a royalty-free nonexclusive, irrevocable, nontransferable worldwide license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all copyrightable material first produced or composed in the performance of this Agreement.

17. Standard of Performance

Recipient, its subcontractors and their employees, in the performance of Recipient's work under this Agreement shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in the Recipient's field.

Any costs for failure to meet the foregoing standard or to correct otherwise defective work that requires re-performance of the work, as directed by Commission Project Manager, shall be borne in total by Recipient and not the Commission. The failure of a project to achieve the performance goals and objectives stated in the Work Statement is not a basis for requesting re-performance unless the work conducted by Recipient and/or its subcontractors is deemed by the Commission to have failed the foregoing standard of performance.

In the event Recipient/subcontractor fails to perform in accordance with the above standard:

- (1) Recipient/subcontractor will re-perform, at its own expense, any task which was not performed to the reasonable satisfaction of the Commission Project Manager. Any work re-performed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Recipient/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Commission;
- (2) The Commission shall provide a new schedule for the re-performance of any task pursuant to this paragraph in the event that re-performance of a task within the original time limitations is not feasible; and
- (3) The Commission shall have the option to direct Recipient/subcontractor not to re-perform any task which was not performed to the reasonable satisfaction of the Commission Project Manager pursuant to application of (1) and (2) above. In the event the Commission directs Recipient/subcontractor not to re-perform a task, the Commission and Recipient shall negotiate a reasonable settlement for satisfactory work performed. No previous payment shall be considered a waiver of the Commission's right to reimbursement.

Nothing contained in this section is intended to limit any of the rights or remedies which the Commission may have under law.

18. *Payment of Funds*

The Energy Commission agrees to reimburse the Recipient for actual allowable expenditures incurred in accordance with the Budget. The rates in the Budget are rate caps, or the maximum amount allowed to be billed. The Recipient can only bill for actual expenses incurred at the Recipient's actual direct labor rate(s), fringe benefit rate(s), and indirect rate(s), not to exceed the rates specified in the Budget.

a. *Payment Requests*

The Recipient may request payment from the Commission at any time during the term of this Agreement although it is preferred that payment requests be submitted with the progress reports. The final payment request must be received by the Energy Commission along with the draft Final Report 60 days prior to the end of the Agreement term.

Payments will be made on a reimbursement basis for Recipient expenditures, i.e., after the Recipient has paid for a service, product, supplies, or other approved budget item. No reimbursement for food or beverages shall be made other than allowable per diem charges.

Funds in this Agreement have a limited period in which they must be expended. All Recipient expenditures (Commission-reimbursed and match share) must occur within the approved term of this Agreement

b. Documentation

All payment requests must be submitted using a completed Payment Request form (Exhibit B, Attachment B-1). This form must be accompanied by an itemized list of all charges and copies of all receipts or invoices necessary to document these charges for both Commission and match share, including backup documentation for actual expenditures, such as time cards, vendor invoices, and proof of payment. Each payment request shall be adjusted to account for any cost share funding including rebate proceeds pursuant to Section 25(n) below. Any payment request that is submitted without the itemization will not be authorized. If the itemization or documentation is incomplete, inadequate, or inaccurate, the Commission Project Manager will inform the Recipient and hold the invoice until all required information is received or corrected. Any penalties imposed on the Recipient by a subcontractor because of delays in payment will be paid by the Recipient.

Any documentation in foreign currency must be converted to dollars, and the conversion rate must be included in your itemization.

c. Certification

The following certification shall be included on each Payment Request form and signed by the Recipient's authorized officer:

I certify to the best of my knowledge and belief that this report is correct and complete and all outlays and obligations are for the purposes set forth in the funding Agreement and that the reimbursement of these costs has not and will not be received under other sources including, but not limited to, a Government Entity contract, subcontract or other procurement method.

d. Government Entity

Government Entity is defined as a governmental agency from California or any state or a state college or state university from California or any state; a local government entity or agency, including those created as a Joint Powers Authority; an auxiliary organization of the California State University or a California community college; the Federal Government; a foundation organized to support the Board of Governors of the California Community

Colleges or an auxiliary organization of the Student Aid Commission established under Education Code 69522.

e. Release of Funds

The Commission Project Manager will not process any payment request during the Agreement term until the following conditions have been met:

- All required reports have been submitted and are satisfactory to the Commission Project Manager.
- All applicable special conditions have been met.
- All appropriate permits or permit waivers from governmental agencies have been issued to the Recipient and copies have been received by the Commission Project Manager.
- All products due have been submitted and are satisfactory to the Commission Project Manager.
- Other prepayment conditions as may be required by the Commission Project Manager have been met. Such conditions will be specified in writing ahead of time, if possible.

f. Fringe Benefits, Indirect Overhead, General and Administrative (G&A), and Facilities and Administration (F&A)

Indirect cost rates must be developed in accordance with generally accepted accounting principles and the applicable OMB circulars or federal acquisition regulations. If the Recipient has an approved fringe benefits or indirect cost rate (indirect overhead, G&A, or F&A) from their cognizant Federal Agency, the Recipient may bill at the federal rate up to the Budget rate caps if the following conditions are met:

- The Recipient may bill at the federal provisional rate but must adjust annually to reflect their actual final rates for the year in accordance with the Labor, Fringe, and Indirect Invoicing Instructions which can be accessed at www.energy.ca.gov/contracts/pier/PIERInvoicingInstructions.doc.
- The cost pools used to develop the federal rates must be allocable to the Commission Agreement, and the rates must be representative of the portion of costs benefiting the Commission Agreement. For example, if the federal rate is for manufacturing overhead at the Recipient's manufacturing facility and the Commission Agreement is for research and development at their research facility, the federal

indirect overhead rate would not be applicable to the Commission Agreement.

- The federal rate must be adjusted to exclude any costs that are specifically prohibited in the Commission Agreement.
- The Recipient may only bill up to the Agreement Budget rate caps unless and until an amendment to the Agreement Budget is approved.

g. Retention

It is the Commission's policy to retain 10 percent of any payment request or 10 percent of the total Commission award at the end of the project. After the project is complete the Recipient must submit a completed payment request form requesting release of the retention. The Commission Project Manager will review the project file and, when satisfied that the terms of the funding Agreement have been fulfilled, will authorize release of the retention.

h. State Controller's Office

Payments are made by the State Controller's Office.

19. *Fiscal Accounting Requirements*

The Recipient shall review and comply with the administrative requirements outlined in the applicable sections of the OMB circulars and/or federal provisions incorporated as part of the funding Agreement. The OMB circulars and/or federal provisions are supplemented with the following requirements:

a. Accounting and Financial Methods

The Recipient shall establish a separate ledger account or fund for receipt and disbursement of Commission funds for each project funded by the Commission. Expenditure details must be maintained in accordance with the approved budget details using appropriate accounting practices.

b. Retention of Records

The Recipient shall retain all project records (including financial records, progress reports, and payment requests) for a minimum of three (3) years after the final payment has been received or three years after the federal grant term, whichever is later, unless otherwise specified in the funding Agreement.

Records for nonexpendable personal property acquired with grant funds shall be retained for three years after its final disposition or three years after the federal grant term, whichever is later.

c. Audits

Upon written request from the Commission, the Recipient shall provide detailed documentation of all expenses at any time throughout the project. In addition, the Recipient agrees to allow the Commission or any other agency of the State or the Federal Government, or their designated representative, upon written request, to have reasonable access to and the right of inspection of all records that pertain to the project during the term of this Agreement and for a period of three (3) years thereafter or three years after the federal grant term, whichever is later, unless the Commission notifies the Recipient, prior to the expiration of such three-year period, that a longer period of record retention is necessary. Further, the Recipient agrees to incorporate an audit of this project within any scheduled audits, when specifically requested by the State. Recipient agrees to include a similar right to audit in any subcontract.

Recipients are strongly encouraged to conduct annual audits in accordance with the single audit concept. The Recipient should provide two copies of the independent audit report and any resulting comments and correspondence to the Commission Project Manager within 30 days of the completion of such audits.

d. Cost or Match Share

If the grant Budget includes cost or match share under this Agreement, the Recipient agrees to be liable for the percentage of cost or match share identified in this Agreement only to the extent necessary to meet the minimum cost effectiveness standard described in the Block Grant Guidelines.

Failure to provide the minimum required cost or match share to meet the minimum cost-effectiveness standard may result in the subsequent recovery of some or all of the funds provided under this Agreement.

The Recipient must maintain accounting records detailing the expenditure of the match (actual cash and in-kind services) and provide complete documentation of expenditures as described under "Payment of Funds."

20. Indemnification

The Recipient agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or

resulting to Recipient and to any and all contractors, subcontractors, material men, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Recipient in the performance of this Agreement.

21. Disputes

In the event of a dispute or grievance between Recipient and the Commission regarding this Agreement, the following two-step procedure shall be followed by both parties. Recipient shall continue with responsibilities under this Agreement during any dispute.

a. Commission Dispute Resolution

The Recipient shall first discuss the problem informally with the Commission Project Manager. If the problem cannot be resolved at this stage, the Recipient must direct the grievance together with any evidence, in writing, to the Commission Grants and Loans Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Recipient's position and the remedy sought. The Commission Grants and Loans Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Recipient. The Grants and Loans Officer shall respond in writing to the Recipient, indicating a decision supported by reasons. Should the Recipient disagree with the Grants and Loans Officer decision, the Recipient may appeal to the second level.

The Recipient must prepare a letter indicating why the Grants and Loans Officer's decision is unacceptable, attaching to it the Recipient's original statement of the dispute with supporting documents, along with a copy of the Grants and Loans Officer's response. This letter shall be sent to the Executive Director at the Commission within ten (10) working days from receipt of the Grants and Loans Officer's decision. The Executive Director or designee shall meet with the Recipient to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Recipient within twenty (20) working days of receipt of the Recipient's letter. The Executive Director may exercise the option of presenting the decision to the Commission at a business meeting. Should the Recipient disagree with the Executive Director's decision, the Recipient may appeal to the Commission at a regularly scheduled business meeting. Recipient will be provided with the current procedures for placing the appeal on a Commission Business Meeting Agenda.

b. Mutual Agreement for Arbitration

Should the Commission's Dispute Resolution procedure described above fail to resolve a dispute or grievance to the satisfaction of the Recipient, either party may seek to have the dispute or grievance resolved through binding arbitration. Both parties must consent before submitting the dispute to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later than six (6) months after the date of the termination of this Agreement, irrespective of when the dispute or grievance arose, and irrespective of the applicable statute of limitations for a suit based on the dispute or grievance.

The cost of arbitration shall be borne by the parties as follows:

- The AAA's administrative fees shall be borne equally by the parties;
- The expense of a stenographer shall be borne by the party requesting a stenographic record;
- Witness expenses for either side shall be paid by the party producing the witness;
- Each party shall bear the cost of its own travel expenses;
- All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of Agreement funds. Both parties must agree, in writing, to utilize Agreement funds to pay for arbitration costs.

If the parties do not mutually agree to binding arbitration, the sole forum to resolve the dispute is State court.

22. Workers' Compensation Insurance

- a. Recipient hereby warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the Commission Project Manager satisfactory evidence of this insurance at any time the Commission Project Manager may request.
- b. If Recipient is self-insured for worker's compensation, it hereby warrants such self-insurance is permissible under the laws of the State of California and agrees to furnish to the Commission Project Manager satisfactory evidence of this insurance at any time the Commission Project Manager may request.

23. General Provisions

- a. Governing Law

It is hereby understood and agreed that this Agreement shall be governed by the laws of the State of California as to interpretation and performance.

- b. Independent Capacity

The Recipient, and the agents and employees of the Recipient, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

- c. Assignment

Without the written consent of the Commission in the form of a formal written amendment, this Agreement is not assignable or transferable by Recipient either in whole or in part.

- d. Timeliness

Time is of the essence in this Agreement.

- e. Unenforceable Provision

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

f. Waiver

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.

g. Assurances

The Commission reserves the right to seek further written assurances from the Recipient and its team that the work of the project under this Agreement will be performed consistent with the terms of the Agreement.

h. Change in Business

- (1) Recipient shall promptly notify the Commission of the occurrence of each of the following:
 - (a) A change of address.
 - (b) A change in the business name or ownership.
 - (c) The existence of any litigation or other legal proceeding affecting the project.
 - (d) The occurrence of any casualty or other loss to project personnel, equipment or third parties of a type commonly covered by insurance.
 - (e) Receipt of notice of any claim or potential claim against Recipient for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Commission's rights.
- (2) Recipient shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the Commission. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. In the event the Commission is not satisfied that the new entity can perform as the original Recipient, the Commission may terminate this Agreement as provided in the termination paragraph.

i. Survival of Terms

It is understood and agreed that certain provisions shall survive the completion or termination date of this Agreement for any reason. The provisions include, but are not limited to:

- “Payments of Funds”
- “Equipment”
- “Change in Business”
- “Disputes”
- “Termination”
- “Audit”
- “Indemnification”
- “License”
- “Fiscal Accounting Requirements”

24. *Certifications and Compliance*

a. Federal, State and Municipal Requirements

Recipient must obtain any required permits, ensure the safety and structural integrity of any repair, replacement, construction and/or alteration, and shall comply with all applicable federal, State, and municipal laws, rules, codes, and regulations for work performed under this Agreement.

b. State Nondiscrimination Statement of Compliance

During the performance of this Agreement, Recipient and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Recipient and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Recipient and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part of it as if set forth in full. Recipient and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

c. State Drug-Free Workplace Certification

By signing this Agreement, the Recipient hereby certifies under penalty of perjury under the laws of the State of California that the Recipient will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- (1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a).
- (2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - The dangers of drug abuse in the workplace;
 - The person's or organization's policy of maintaining a drug-free workplace;
 - Any available counseling, rehabilitation, and employee assistance programs; and
 - Penalties that may be imposed upon employees for drug abuse violations.
- (3) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed project:
 - Will receive a copy of the company's drug-free policy statement;
 - Will agree to abide by the terms of the company's statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future State awards if the

Commission determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

d. Americans with Disabilities Act

By signing this Agreement, Recipient assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

25. Additional Requirements for Federally- Funded Grants

For purposes of this Section 25, the term “subawardee” refers to any entity other than a vendor that receives funding from the Recipient to carry out or support any portion of this Agreement. The term “vendor” refers to those entities defined as such by OMB Circular A-133 (see Subpart A, Section .105 and Subpart B, Section .210). The Recipient must include all of the provisions below in its agreements with subawardees. It must include in its agreements with vendors only the terms in Attachment C-7 of this Exhibit, “Vendor Flow-Down Provisions”.

a. Site Visits

The California Energy Commission, the federal awarding agency, and/or their designees have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Recipient must provide and must require subawardees to provide reasonable facilities and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

b. Notice Regarding the Purchase of American-Made Equipment and Products – Sense of Congress

It is the sense of the Congress of the United States that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

c. Nondiscrimination Clause

This award is subject to the provisions of 10 CFR Part 1040.1 *et seq.* The Recipient will complete and certify by signature on the DOE Form 1600.5, U.S. DOE “Assurance of Compliance, Nondiscrimination in Federally

Assisted Programs” (Exhibit C, Attachment C-1) its commitment to comply with this law and return to the Commission Grants and Loans Officer.

d. Certifications Regarding Lobbying and Debarment, Suspension and Other Responsibility Matters

This award is subject to the provisions of 10 CFR Part 601, 2 CFR Part 180, 2 CFR Part 901, and 10 CFR Part 607. The Recipient will complete and certify by signature on the attached Form “Certifications Regarding Lobbying and Debarment, Suspension and Other Responsibility Matters” (Exhibit C, Attachment C-2) its commitment to comply with these requirements and return to the Commission Grants and Loans Officer.

e. Lobbying Restrictions

By accepting funds under this award, the Recipient agrees that none of the funds obligated under this agreement shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

The Recipient shall disclose lobbying activities by completing and signing the “Disclosure of Lobbying Activities” (Exhibit C, Attachment C-3) and returning it to the Commission Grants and Loans Officer.

f. National Policy Assurances

The Recipient agrees to adhere to and include in all subawards the requirements set forth in the attached “National Policy Assurances” (Exhibit C, Attachment C-4 of this Agreement). Terms are self-deleting to the extent they do not apply to a particular type of activity or award.

g. Federal Intellectual Property Provisions and Contact Information

(1) In addition to the “License” provisions in Section 15 of this Agreement, the Recipient must conform to “Federal Intellectual Property Provisions” (Exhibit C Attachment C-5) included in this Agreement. A list of all intellectual property provisions may be found at http://www.gc.doe.gov/financial_assistance_awards.htm.

(2) Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at

h. Decontamination and/or Decommissioning (D &D) Costs

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Recipient or its subawardees for (i) Decontamination and/or Decommissioning (D&D) of any of the Recipient's or its subawardees' facilities, or (ii) any costs which may be incurred by the Recipient or its subawardees in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

i. National Environmental Policy Act (NEPA) Compliance

The Recipient is restricted from taking any action using federal funds for projects under this award that would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing a final NEPA determination regarding these projects.

If the Recipient moves forward with activities that are not authorized for federal funding by the DOE Contracting Officer in advance of the final NEPA determination, the Recipient is doing so at risk of not receiving federal funding, and such costs may not be recognized as allowable cost share.

j. Historic Preservation

Prior to the expenditure of EECBG Program funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA) outlined in 36 CFR Part 800, consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 of the NHPA applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. Recipients shall avoid undertaking any project activities that result in an adverse effect to historic properties pending compliance with Section 106. Section 110(k) of the NHPA applies to DOE funded activities.

In order to fulfill the requirements of Section 106, the Energy Commission and applicants must consult with the California State Historic Preservation

Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to ensure proposed projects will have no adverse effects on any historic resources.

The Energy Commission executed a Programmatic Agreement on February 18, 2010 (Programmatic Agreement) with the SHPO to streamline the Section 106 consultation process and to categorically exclude some projects from the SHPO's direct review and consultation. Because of their nature, these categorically excluded projects cannot impact historic resources. The categorically excluded projects are identified in the Programmatic Agreement and include: (1) undertakings for planning, training and educational purposes; (2) undertakings to replace equipment on existing buildings or structures that result in no building or structure changes or ground disturbances; and (3) undertakings on buildings or structures less than 45 years of age that will result in no ground disturbances. Projects that are categorically excluded from the SHPO's direct review and consultation will be deemed to have satisfied Section 106 of NHPA without further review or involvement by the SHPO.

The Energy Commission will evaluate projects to determine whether such projects are categorically excluded from the SHPO's direct review and consultation under the Programmatic Agreement. If projects are categorically excluded, the Energy Commission will issue the project applicant a clearance letter on the SHPO's behalf.

In order for the Energy Commission to determine whether a given project is categorically excluded from the SHPO's direct review and consultation, the applicant must prepare a Consultation Package, as provided in the Programmatic Agreement, for each building or structure upon which the project will be undertaken.

k. Availability of Federal Funds

It is mutually agreed that partial or whole funding for this Agreement is dependent upon a federal agreement (DE-EE0000905) that has a scheduled budget period end date of September 13, 2012, and is subject to the following provisions: (1) This Agreement is subject to any additional restrictions, limitations, or conditions enacted by Congress or any statute enacted by Congress that may affect the provisions, terms, or funding of this Agreement; (2) Funding for this Agreement is subject to the approval of the U.S. Department of Energy (DOE) and to any additional restrictions, limitations, or conditions imposed by DOE, federal law, federal court judgments, and/or federal agency orders which may affect the provisions or terms of this Agreement; (3) If Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any

reduction in funds; and (4) The Commission has the option to invalidate the Agreement under the 30-day cancellation clause or to amend the Agreement to reflect any reduction in funds.

I. Resolution of Conflicting Terms

Any apparent inconsistency between federal and state statutes and regulations and the terms and conditions contained in this award must be referred to the Commission Project Manager or the Commission Grants and Loans Officer for guidance.

m. Statement of Federal Stewardship

DOE will exercise normal federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

n. Disclosure and Use of Rebate Proceeds and other Cost Share Funding

Recipients shall disclose all sources of cost share funding that will support the projects and activities under this Agreement, including the receipt of any utility or manufacturer rebates for which the Recipient qualifies through the purchase or installation of energy efficiency measures under this Agreement. Such "cost share funding" sources include, but are not limited to: repayments to and interest earned on a revolving loan fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds. If such funding is anticipated at the time of the Agreement, it shall be reported as "Cost Share" funding on the initial Category Budget (Attachment B) (Budget). If any such funding becomes available before the end of the term of this Agreement, it shall be reported in the final payment request.

Recipients shall adjust payment requests for cost reimbursement by any cash available from cost share funding sources. Recipients that earn program income as defined at 10 CFR Part 600.124 may add the program income to the funds provided under this Agreement and used to further eligible project objectives.

o. Specific Requirement to Submit Waste Management Plan

Prior to the proposed project activities generating any waste, the Recipient is required to submit a copy of the Recipient's Waste Management Plan to the Commission Project Manager. This Waste Management Plan will describe the Recipient's plan to dispose of any sanitary or hazardous waste generated by the proposed project activities. Sanitary and hazardous waste includes, but is not limited to, construction and demolition debris, old light bulbs, fluorescent ballasts and lamps, piping, roofing material, discarded equipment, debris, and asbestos.

The Recipient's Waste Management Plan must comply with all federal, state, and local laws and regulations governing waste disposal.

p. Single Audit Act

In order to be eligible for EECBG Program funding, all cities, counties, and lead collaborative applicants must be in compliance with the requirements of the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156, and Office of Management and Budget (OMB) Circular A-133, Audits of State, Local Governmental, and Non-Profit Organizations. More specifically, OMB Circular A-133, Subpart B, Section .200 requires that non-Federal entities which expend \$500,000 or more in a year in Federal awards shall have a single or program specific audit conducted for that year. Thus, prior to the Energy Commission reimbursing the Recipient for any project costs, the Recipient must demonstrate compliance with the Single Audit Act and OMB Circular A-133. If after four months following the execution of this Agreement the Recipient is not in compliance with these requirements, the Energy Commission reserves the right to terminate the grant award and reallocate EECBG Program funding, as provided in the Block Grant Guidelines.

Further, in executing this Agreement the Recipient understands and acknowledges that compliance with the Single Audit Act and OMB Circular A-133 is mandatory and that failure to comply at any time during the period of this Agreement could adversely affect the Energy Commission's ability to reimburse project costs, and may require the termination and reallocation of the grant award.

q. Cash Management Improvement Act

In accordance with 31 United States Code (U.S.C.) Sections 3335, 6501, and 6503 (the Cash Management Improvement Act, or CMIA) and implementing regulations at 31 CFR Part 205, the Recipient shall minimize the time elapsing between the drawdown of funds from the Energy Commission and the disbursement of funds. The Recipient shall request reimbursement to occur as close as possible to the disbursement.

The Recipient agrees that it has reviewed the applicable CMIA rules and regulations, and will follow their requirements in handling funds received pursuant to this Agreement. The Recipient also agrees that it will provide written notification to each of its subawardees or vendors, if any, of the CMIA and the need for each subawardee or vendor to comply with all applicable CMIA provisions and regulations.

r. Project Extensions

Project extensions are not permitted for EECBG grants. Projects must be completed and operational by the ending term date of this Agreement. If a project cannot be completed within the term of this Agreement, the Agreement will be terminated and remaining grant funds unencumbered.

26. Special Provisions Relating to Work Funded Under the American Recovery and Reinvestment Act of 2009

For purposes of this Section 26, the term “vendor” refers to those entities defined as such by OMB Circular A-133 (see Subpart A, Section .105 and Subpart B, Section .210). The term “subawardee” refers to any entity other than a vendor that receives funding from the Recipient to carry out or support any portion of this Agreement. The Recipient must include all of the provisions below in its agreements with subawardees. It must include in its agreements with vendors only the terms in Attachment C-7 of this Exhibit, “Vendor Flow-Down Provisions”.

a. ARRA-Funded Project

Funding for this award is from the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. Funding for this award is authorized by the Energy Efficiency and Conservation Block Grant Program, Federal Grant Number DE-EE0000013, CFDA Number 81.128. The federal grant term expires on September 13, 2012. All recipients and subawardees/vendors are subject to audit by appropriate federal or State entities. The State has the right to cancel, terminate, or suspend this Agreement if the Recipient or its subawardee fails to comply with the reporting and operational requirements contained herein.

b. Enforceability

The Recipient agrees that if it or one of its subawardees/vendors fails to comply with all applicable federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds

following an audit. This provision is in addition to all other remedies available to the State under all applicable State and federal laws.

c. Registration Requirements

Prior to beginning work, the Recipient must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and register with the Central Contract Registration (CCR). Websites are as follows:

DUNS website: http://www.dnb.com/US/duns_update

CCR website: <http://www.ccr.gov>

The Recipient must maintain current registrations in the CCR at all times during which it has an active award funded with ARRA funds. A DUNS Number is one of the requirements for registration in the CCR.

d. Segregation of Costs and Records

The Recipient and its subawardee/vendors must segregate the obligations and expenditures related to funding under ARRA. Financial and accounting systems should be revised as necessary to segregate, track, and maintain these funds apart and separate from other revenue streams. No part of the funds from ARRA shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for ARRA projects. Pursuant to 10 CFR Section 600.242 (incorporated by reference herein), records must be maintained for three (3) years after the Commission grant term or federal grant term, whichever is later, unless the Commission or Federal Government requests a longer retention period.

The Recipient and its subawardees/vendors must keep separate records for ARRA funds to ensure those records comply with the requirements of ARRA. If this grant is split-funded with non-ARRA funds, the Recipient must track and report the ARRA funds separately to meet the reporting requirements of ARRA and related guidance.

e. Prohibition on Use of ARRA Funds

The Recipient agrees that, in accordance with ARRA, Section 1604, that none of the funds provided under this Agreement derived from ARRA may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

f. Access to Records

In accordance with ARRA Sections 902, 1514, and 1515, the Recipient agrees that it shall permit the State of California, the United States Comptroller General or his representative, or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records of the Recipient or any of its subawardees/vendors that directly pertain to, and involve transactions relating to, this Agreement; and (2) interview any officer or employee of the Recipient or any of its subawardees/vendors regarding the activities funded with funds appropriated or otherwise made available by ARRA. The Recipient shall include this provision in all of its agreements with its subawardees/vendors from whom it acquires goods or services in its execution of the ARRA-funded work.

g. Publication

Information about this Agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

h. Protecting State and Local Government and Contractor Whistleblowers

The Recipient agrees that both it and its subawardee/vendors shall comply with Section 1553 of ARRA, which prohibits all non-federal contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. The Recipient agrees that it and its subawardees shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

The requirements of Section 1553 of the ARRA are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-federal employer receiving covered funds under ARRA may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the

Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a federal agency, or their representatives, information that the employee believes is evidence of:

- Gross mismanagement of an agency contract or grant relating to covered funds;
- A gross waste of covered funds;
- A substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- An abuse of authority related to the implementation or use of covered funds; or
- A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under ARRA shall post notice of the rights and remedies as required therein. (Refer to Section 1553 of ARRA located at www.recovery.gov, for specific requirements of this section and prescribed language for the notices.)

i. Information in Support of ARRA Reporting

The Recipient will be required to submit backup documentation for expenditures of funds under ARRA including such items as timecards and invoices. See Section 18, "Payment of Funds", for more details on invoicing. In addition to the invoicing requirements, the Recipient shall provide copies of backup documentation at the request of the U.S. Department of Energy's (DOE's) Contracting Officer or designee, or the Energy Commission's Contract Manager or designee.

j. False Claims Act

The Recipient agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subawardee/vendor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

k. Availability of Funds

Funds appropriated under ARRA and obligated to this award are available for reimbursement of costs until the end of your grant term or September 13, 2012, whichever comes first.

l. Reporting and Registration Requirements under Section 1512 of ARRA

- (1) This award requires the Recipient to complete projects or activities which are funded under ARRA and to report on use of ARRA funds provided through this award. Information from these reports will be made available to the public.
- (2) The reports are due in accordance with Section 7, "Reports", of this Agreement in addition to this section.
- (3) Progress reports are due monthly by the third of the following month. For example, the January progress report is due by February 3.

- (4) The Recipient must maintain current registration in the CCR (<http://www.ccr.gov>) at all times during which it has an active federal award funded with ARRA funds. A DUNS Number (<http://www.dnb.com>) is one of the requirements for registration in the CCR.
- (5) The Recipient shall report the information described in Section 1512(c) of ARRA and other information reasonably requested by the State or required by the Federal Government or by the State to meet their obligation to provide accurate, complete, and timely information to the public; to meet the federal program reporting requirements; and/or to comply with State or federal law or regulation. Standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of ARRA are provided online at www.FederalReporting.gov.
- (6) The Recipient shall submit reports to the Commission's Project Manager in a format determined by the Commission. The Recipient must NOT register at [FederalReporting.gov](http://www.FederalReporting.gov).
- (7) The Recipient must provide information including, but not limited to, the following:
- (a) ARRA Section 1512 Report
- Direct jobs created (i.e., new positions created and filled or unfilled positions that are filled) and jobs retained (i.e., previously existing filled positions that are retained as a result of ARRA funds). Only include jobs that are directly funded by ARRA funds. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule.
 - Description of jobs created. Provide a brief description of impact on the Recipient's workforce and include the types of jobs created and retained. Include time base (full-time or part-time) and duration (1 year, 1-2 years, 2-5 years, or more than 5 years).
 - Furthermore, subrecipients will be required to calculate direct jobs created and retained by each subcontractor, including all subrecipients and many vendors. The requirement to calculate vendor jobs does not apply to subcontracts with material suppliers or central service providers (so-called "indirect" jobs),

or to jobs created by the re-spending of worker income within the local community ("induced" jobs). Job calculations will be captured on the FTE Calculator tab of the Subrecipient 1512 reporting spreadsheet. Per the Single Audit Act Amendments of 1996, subrecipients should be able to substantiate vendor/subcontractor job hours reported by retaining payroll and project records for a minimum of three (3) years after the final payment has been received, unless a longer period of records retention is stipulated.

- Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number.
- Central Contractor Registration (CCR) number.
- Award number.
- Name (legal name as registered in CCR or D&B).
- The Doing-Business-As (DBA) name as registered in CCR or D&B.
- Address (physical location as listed in the CCR).
- Congressional district (based on physical location address).
- Type of entity (this is the "Business Type" in the CCR).
- Amount awarded (total amount of the Commission agreement).
- Amount received (total cumulative amount of Commission agreement funds received as of the reporting period).
- Date of award (date the Commission agreement was signed).
- Award period (term of the Commission agreement).
- Place of performance (the physical location of primary place of performance, including street address, city, state, zip code+4, country, congressional district, state senate district, and state assembly district).
- Area of benefit (e.g., state, county, city, special district).
- Names and total compensation of five most highly compensated officers for the calendar year in which the agreement is awarded if,
 - In the Recipient's preceding fiscal year, the Recipient received –
 - 80 percent or more of its annual gross revenues from federal contracts (and subcontracts), loans, grants (and

- subgrants) and cooperative agreements;
and
 - \$25,000,000 or more in annual gross revenues from federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements
- The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986.
- Vendor Data Elements (purchases \$25,000 or above)
 - DUNS or name.
 - Zip code of Headquarters.
 - Description of the product and/or service provided by the vendor.
 - The amount invoiced from the vendor (aggregated) that will be paid with ARRA funds.

(b) Federal and State Program Status Report

- comparison of the actual accomplishments with the goals and objectives established for the period and reasons why the established goals were not met.
- A discussion of what was accomplished under these goals during this reporting period, including major activities, significant results, major findings or conclusions, key outcomes or other achievements. This section should not contain any proprietary data or other information not subject to public release. If such information is important to reporting progress, do not include the information, but include a note in the report advising the reader to contact the Principal Investigator or the Project Director for further information.
- Cost Status. Show approved budget by budget period and actual costs incurred. Separate costs by project activities, administration, and evaluation.
- Schedule Status. List milestones, anticipated completion dates, and actual completion dates.
- Any changes in approach or aims, and reasons for change.

- Actual or anticipated problems or delays, and actions taken or planned to resolve them.
- Any absence or changes of key personnel or changes in consortium/teaming arrangement.
- A description of any product produced or technology transfer activities accomplished during this reporting period, such as:
 - Publications (list journal name, volume, issue); conference papers; or other public releases of results.
 - Web site or other Internet sites that reflect the results of this project.
 - Networks or collaborations fostered.
 - Technologies/techniques.
 - Inventions/patent applications.
 - Other products, such as data or databases, physical collections, audio or video, software or netware, models, educational aid or curricula, instruments or equipment.
- Performance Metrics
 - Energy saved (kWh, therms, gallons, Btu, etc.).
 - Renewable energy installed capacity and generated.
 - GHG emissions reduced (tons) (CO2 equivalents) (methane, carbon, sulfur dioxide, nitrogen oxide, carbon monoxide).
 - Energy cost savings.
 - Funds leveraged.
 - Project type metrics. The key metrics to be reported will vary by project type. See Exhibit C, Attachment C-6, Project Type Metrics.

m. Required Use of American Iron, Steel, and Manufactured Goods (Covered Under International Agreements) — Section 1605 of ARRA

The Recipient agrees that in accordance with ARRA, Section 1605, neither it nor its subawardees/vendors will use ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Recipient understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.

(1) Definitions. As used in this award term and condition—

- (a) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—
- Processed into a specific form and shape; or
 - Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.
- (b) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.
- (c) Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
- (2) Domestic preference.
- (a) This award term and condition implements Section 1605 of the ARRA by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraphs 2b and 2c of this section and condition.
- (b) This requirement does not apply to the material listed by the Federal Government as follows:
- None
- (c) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph 2b of this section and condition if the Federal Government determines that—

- The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
- The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- The application of the restriction of Section 1605 of the ARRA would be inconsistent with the public interest.

(3) Request for determination of inapplicability of Section 1605 of the ARRA.

- (a) (i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph 2c of this section shall include adequate information for Federal Government evaluation of the request, including—
- A description of the foreign and domestic iron, steel, and/or manufactured goods;
 - Unit of measure;
 - Quantity;
 - Cost;
 - Time of delivery or availability;
 - Location of the project;
 - Name and address of the proposed supplier; and
 - A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph 2c of this section.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph 4 of this section.
- (iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

- (iv) Any recipient request for a determination submitted after ARRA funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.
 - (b) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to Section 1605 of the ARRA applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).
 - (c) Unless the Federal Government determines that an exception to Section 1605 of the ARRA applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with Section 1605 of ARRA.
- (4) Data. To permit evaluation of requests under paragraph 2 of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

<u>Description</u>	<u>Unit of Measure</u>	<u>Quantity</u>	<u>Cost (\$s)</u>
Item 1:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
Item 2:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

n. Wage Rate Requirements under Section 1606 of ARRA

In accordance with ARRA, Section 1606, the Recipient assures that it and its subawardees/vendors shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section.

The Recipient will complete and certify by signature on Attachment "K" of the application its commitment to comply with 29 CFR 5.5 and will return it to the Commission Grants and Loans Officer.

o. Davis-Bacon Act and Contract Work Hours and Safety Standards Act

(1) Definitions. For purposes of this section, Davis Bacon Act and Contract Work Hours and Safety Standards Act, the following definitions are applicable:

Award means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors and subcontractors.

- (a) Contractor means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients' or Subrecipients' contractors, subcontractors, and lower-tier subcontractors. "Contractor" does not mean a unit of State or local government where construction is performed by its own employees.
- (b) Contract means a contract executed by a Recipient, Subrecipient, prime contractor or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. "Contract" does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.
- (c) Contracting Officer means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.
- (d) Recipient means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement or technology investment agreement

directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

- (e) Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower- tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient's procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of "Award" above.
- (f) Subrecipient means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

(2) Davis-Bacon Act

- (a) Minimum wages.
 - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to 29 CFR Section 5.5 (a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly

period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Section 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Section 5.5(a)(1)(ii)) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (ii) (a) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - i. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - ii. The classification is utilized in the area by the construction industry; and
 - iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report

of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

- (c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
 - (d) The wage rate (including fringe benefits where appropriate) determined pursuant to 29 CFR Section 5.5 (a)(1)(ii)(B) or (C), shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 - (iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) Withholding. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(c) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR Section 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors

employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (ii) (a) **The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy.** The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Section 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

- (b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
 - i. That the payroll for the payroll period contains the information required to be provided under Section 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Section 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
 - ii. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - iii. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
- (c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by 29 CFR Section 5.5(a)(3)(ii)(B).
- (d) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.
- (iii) The Contractor or subcontractor shall make the records required under 29 CFR Section 5.5(a)(3)(i) available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the

Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Section 5.12.

(d) Apprentices and trainees

- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount

of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees. Except as provided in 29 CFR Section 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
- (e) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.
- (f) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained in 29 CFR Sections 5.5(a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.
- (g) Contract termination: debarment. A breach of the Contract clauses in 29 CFR Section 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR Section 5.12.
- (h) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- (i) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (j) Certification of eligibility.
 - i. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).

- ii. No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).
- iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. Section 1001.

(k) Requirement to submit copies of certified payrolls

Contractor is responsible to submit to the Energy Commission on a weekly basis a copy of all certified payrolls prepared in accordance with Section 26(o)(2)(c)(ii) above for all lower tier contractors.

(l) Requirement to notify the Energy Commission of any non-compliance

Contractor is responsible to notify the Energy Commission of any non-compliance with Davis-Bacon Act prevailing wage requirements by any lower tier contractors.

3) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

- (a) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth 29 CFR Section 5.5(b)(1) the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in 29 CFR Section 5.5(b)(1), in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours

without payment of the overtime wages required by the clause set forth in 29 CFR Section 5.5 (b)(1).

- (c) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in 29 CFR Section 5.5(b)(2).
 - (d) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in 29 CFR Sections 5.5(b)(1) through (4) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 CFR Sections 5.5(b)(1) through (4).
 - (e) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.
- p. ARRA Transactions Listed in Schedule of Expenditures of Federal Awards
- (1) To maximize the transparency and accountability of funds authorized under ARRA as required by Congress and in accordance with 2 CFR Section 215.21 "Uniform Administrative

Requirements for Grants and Agreements” and OMB Circular A–102 Common Rules provisions, the Recipient agrees to maintain records that identify adequately the source and application of ARRA funds. OMB Circular A–102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

- (2) If the Recipient is covered by the Single Audit Act Amendments of 1996 and OMB Circular A–133, “Audits of States, Local Governments, and Non-Profit Organizations,” the Recipient agrees to separately identify the expenditures for federal awards under the ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF–SAC) required by OMB Circular A–133. OMB Circular A–133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for federal awards made under the ARRA separately on the SEFA, and as separate rows under Item 9 of Part III on the SF–SAC by CFDA number, and inclusion of the prefix “ARRA-” in identifying the name of the federal program on the SEFA and as the first characters in Item 9d of Part III on the SF–SAC.
- (3) The Recipient agrees to separately identify to each subawardee, and document at the time of subaward and at the time of disbursement of funds, the federal award number, CFDA number, and amount of ARRA funds. When the Recipient awards ARRA funds for an existing program, the information furnished to subawardees shall distinguish the subawards of incremental ARRA funds from regular subawards under the existing program.
- (4) The Recipient agrees to require its subawardees to include on their SEFA information to specifically identify ARRA funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subawardee expenditure of ARRA funds as well as oversight by the federal awarding agencies, Offices of Inspector General, and the Government Accountability Office.

27. Data in Support of Energy Savings and Emission Reductions

The Commission may request utility bill data from the Recipient to track program energy savings and greenhouse gas emission reduction impacts. Upon request, the Recipient must be prepared to provide utility billing data for at least the 12 months preceding and the 12 months following the project’s implementation of a building retrofit project. To ease the burden of this data provision on the Recipient, the Commission will work with the Recipient’s utility company to facilitate the electronic exchange of the required billing data. The Recipient

authorizes the Commission to exchange this data with the Recipient's energy utility company and agrees to complete an authorization form if requested by the Commission.

Upon written request from the Commission, the Recipient and its subawardees shall allow the Commission or its agent access to facilities and records and allow the Commission or its agent to collect data needed to measure and verify electricity and fuel reductions (this may include but is not limited to utility bills, metering data, facility equipment surveys, information on operational practices, and site occupancy levels). Further, if requested, the Recipient and subawardees must provide the Commission or its agent associated data from a period prior to the start of the project as necessary to establish baseline energy and/or fuel use. The Recipient shall include this provision in its subaward agreements.

28. *Compliance with California Prevailing Wage Laws for Public Works Projects*

The Recipient agrees to pay not less than the specified general prevailing wage rates to all workers employed in the execution of the contract subject to the requirements of California Labor Code Section 1770 et seq. The Recipient is responsible for ascertaining and complying with all current general prevailing wage requirements and rates for crafts and any rate changes that occur during the life of the contract. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view. The Recipient is further responsible to keep accurate payroll records and comply with all other administrative requirements provided in the California Labor Code.

29. *Requirement to Submit Subcontractor Documentation of Prevailing Wage Determinations Prior to Commencing Work*

The Recipient understands and acknowledges that no work may commence on the project unless and until all subcontract documentation pursuant to Section 10 of this Agreement, including, but not limited to, all applicable prevailing wage determinations, is submitted to the Energy Commission. Installation costs incurred prior to the submittal of such documentation are not reimbursable under this Agreement and will be disallowed.

The Recipient is exempt from the requirement to submit prevailing wage determinations only if its authorized legal representative certified on the Prevailing Wage Law Compliance and Certification Form (Attachment K in the EECBG Solicitation) that none of the activities to be carried out under this Agreement are subject to the payment of federal or state prevailing wage rates.

30. *Requirement to Submit Waste Management Plan*

The Recipient understands and acknowledges that no work generating waste may commence on the project unless and until a Waste Management Plan that describes the Recipient's plan to dispose of any sanitary or hazardous waste generated by the proposed project activities, as provided in Section 25(o) of this Agreement, is submitted to the Energy Commission. Costs incurred for project activities generating waste prior to the submission of the Recipient's Waste Management Plan are not reimbursable under this Agreement and will be disallowed.

31. *Compliance with the Single Audit Act and OMB Circular A-133*

The Recipient understands and acknowledges that prior to the Energy Commission reimbursing the Recipient for any project costs, the Recipient must demonstrate compliance with the Single Audit Act and OMB Circular A-133. If after four months following the execution of this Agreement the Recipient is not in compliance with these requirements, the Energy Commission reserves the right to terminate the grant award and reallocate EECBG Program funding, as provided in the Block Grant Guidelines.

Further, the Recipient understands and acknowledges that compliance with the Single Audit Act and OMB Circular A-133 is mandatory and that failure to comply at any time during the period of this Agreement could adversely affect the Energy Commission's ability to reimburse project costs, and may require the termination and reallocation of the grant award.

32. *State ARRA Guidelines for Energy Efficiency and Conservation Block Grant Program*

The Commission's *Block Grant Guidelines*, dated October 7, 2009, (publication number CEC-150-2009-002-CMF-REV1) are hereby incorporated by reference and made a part of this Agreement. The Recipient warrants that it has read and understands the Guidelines and acknowledges that requirements specified therein apply to the Recipient and the funding provided under this Agreement. The Recipient acknowledges that the Guidelines are subject to change pursuant to Public Resources Code Section 25462 and that any changes made to the Guidelines shall apply to the Recipient and the funding provided under this Agreement.

